
Program Evaluation: Federal Drug Seizure Fund

*Prepared for the Committee on Legislative Research
by the Oversight Division*

Jeanne Jarrett, CPA, Director

Evaluation Team:

Perry Heckemeyer, CPA, Team Leader; Robert Boone, MPA; Mickey Wilson, CPA

February, 1999

TABLE OF CONTENTS

COMMITTEE ON LEGISLATIVE RESEARCH	ii
LETTER OF TRANSMITTAL	iii
CHAPTER ONE - INTRODUCTION	page 1
CHAPTER TWO - FEDERAL ADOPTION OF SEIZURES	page 3
CHAPTER THREE - EXPENDITURES	page 7
CHAPTER FOUR - REPORTING & RECORDKEEPING	page 8
CHAPTER FIVE - CONCLUSIONS AND RECOMMENDATIONS ..	page 11
APPENDIX 1 Agency Responses	

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STATE CAPITOL
JEFFERSON CITY, MISSOURI 65101-6806

March, 1999

Members of the General Assembly:

The Joint Committee on Legislative Research adopted a resolution in May, 1998, directing the Oversight Division to perform a program evaluation of the Federal Drug Seizure Fund which included the examination of records and procedures of the Missouri Highway Patrol - Drug Seizure Fund to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation.

The accompanying report includes Oversight's comments on internal controls, compliance with legal requirements, management practices, program performance and related areas. We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert M. Clayton III".

Representative Robert M. Clayton III
Chairman

A handwritten signature in black ink, appearing to read "Harry Wiggins".

Senator Harry Wiggins
Vice Chairman

Chapter I - Introduction

Purpose

The General Assembly has provided by law that the Committee on Legislative Research may have access to and obtain information concerning the needs, organization, functioning, efficiency and financial status of any department of state government or of any institution that is supported in whole or in part by revenues of the State of Missouri. The General Assembly has further provided by law for the organization of an Oversight Division of the Committee on Legislative Research and, upon adoption of a resolution by the General Assembly or upon adoption of a resolution by the Committee on Legislative Research, for the Oversight Division to make investigations into legislative and governmental institutions of this state to aid the General Assembly.

The Committee on Legislative Research directed the Oversight Division to perform a program evaluation and expenditure review of the Federal Drug Seizure Fund within the Department of Public Safety, for the purpose of providing information to the General Assembly regarding proposed legislation and appropriation bills. The Committee on Legislative Research further specified that only state records related to the Federal Drug Seizure Fund be examined. Therefore, no examination of local law enforcement records was conducted.

Background

The Federal Drug Seizure Fund, within the Department of Public Safety, represents the state's portion of seized and confiscated property proceeds resulting from joint state and federal drug investigations under the United States Department of Justice's and the United State's Department of Treasury's Equitable Sharing Program. The Equitable Sharing Program, which began in 1984, has four primary law enforcement goals, including to deprive criminals of property used in or acquired through illegal activities; to encourage joint operations among federal, state, and local law enforcement agencies; to protect the rights of the individual; and to strengthen law enforcement. Forfeited assets are shared with the local or state law enforcement agencies that helped make the case, based upon their participation with federal agencies in the investigation.

OVERSIGHT DIVISION
Program Evaluation 1998
Federal Drug Seizure Fund

The Department of Public Safety has received funding for this program since 1988. Funds are appropriated by the state legislature, with funds being appropriated to the Missouri State Highway Patrol, the Missouri State Water Patrol, and the Office of the Adjutant General for drug enforcement related expenditures. The Equitable Sharing Program provides guidelines on expenditures of these funds. Federal Drug Seizure Fund receipts by the state have varied from \$372,582 in FY96 to \$1,167,296 in FY98.

Any state or local law enforcement agency that directly participates in an investigation or prosecution that results in a federal forfeiture may participate in the Equitable Sharing Program and request a share of the net proceeds of the forfeiture. Agencies generally participate in the program through joint investigations, where federal agencies work with state or local law enforcement agencies to enforce federal criminal laws, or adoption of a state or local seizure. State and local law enforcement agencies that have seized property may request that a federal agency, such as the Federal Bureau of Investigations or the Drug Enforcement Administration, adopt the seizure and proceed with federal forfeiture. Federal agencies may adopt a seizure when the conduct giving rise to the seizure is in violation of federal law. Generally, seizures are not adopted for federal forfeiture unless the equity in the seized property meets a minimum monetary threshold.

State and local law enforcement agencies may apply for an equitable share in seized property by submitting a Form DAG-71, Application for Transfer of Federally Forfeited Property, to the pertinent federal agency. These requests must be submitted within sixty days of the seizure or within sixty days of the federal adoption of a state or local seizure. In joint investigations, the amount of sharing proceeds maintained by the federal agency and distributed to state and local agencies is to reflect the "degree of direct participation of the state or local agency in the law enforcement effort resulting in the forfeiture". Normally this is determined by comparing the number of hours expended by each agency; however, other factors can affect the amounts distributed. In cases adopted by a federal agency, the federal share is at least twenty percent of the net proceeds.

Once the state or local law enforcement agency receive their share of the proceeds, they are required to implement standard accounting practices and internal controls to track these monies. The Guide to Equitable Sharing of Federally Forfeited Property notes several requirements for uses of shared proceeds, and requires that state and local law enforcement agencies receiving proceeds valued at over \$100,000 in a single year obtain an independent financial audit. The Single Audit of the state of Missouri done by the State Auditor's Office has been used to satisfy this requirement.

Objectives

The evaluation of the Federal Drug Seizure Fund included the inspection of records for the purpose of providing information to the General Assembly for their consideration of proposed legislation and appropriation bills. The Oversight Division's evaluation focused on five main objectives as noted below:

- Evaluating the use of the state's portion of forfeiture proceeds to determine appropriateness;
- Reviewing the policies and procedures for the handling of federal drug seizure fund proceeds;
- Reviewing the process of determining the apportionment of forfeiture proceeds;
- Reviewing financial information, including annual certification reports; and
- Evaluating the process of how determination is made that a seizure needs to be adopted by a federal agency.

Scope/Methodology

Our evaluation included interviewing Department of Public Safety personnel; interviewing United States Department of Justice and Department of Treasury personnel; reviewing statutes, guidelines, rules and regulations; reviewing policies and procedures; and examining financial and other records.

Our scope was not limited to any specific fiscal years; however, most of the information examined was from fiscal years 1996 through 1998.

Records of local law enforcement agencies were not within the scope of our evaluation.

Chapter 2 - Federal Adoption of Seizures

Transfer orders are not always obtained for the transfer of seized property from state and local law enforcement agencies to federal agencies.

Section 513.647, RSMo, states that "no state or local law enforcement agency may transfer any property seized by the state or local agency to any federal agency for forfeiture under federal law until the prosecuting attorney and the circuit judge of the county in which the property was seized first review the seizure and approve the transfer to a federal agency. The

prosecuting attorney and the circuit judge shall not approve an transfer unless it reasonably appears the activity giving rise to the investigation or seizure involves more than one state or the nature of the investigation or seizure would be better pursued under federal forfeiture statutes."

During our program evaluation, Oversight selected fifteen case handled by the Missouri State Highway Patrol to review to determine whether a transfer order had been obtained before the seizure was transferred to a federal agency. In three of the cases, the seizure was made directly by a federal agency; therefore, it appears a transfer order was not needed. However in only three of the remaining twelve cases were transfer order completed. In each of these cases, it appears the Missouri State Highway Patrol or a local law enforcement agency made the initial seizure before calling a federal agency to assist.

The legislature may wish to consider statutory changes containing a penalty provision for state and local law enforcement agencies who do not obtain prior approval of transfer of seized property to a federal agency.

In the majority of cases, the Missouri Highway Patrol originated the information leading to the seizure of assets

Oversight also reviewed the DAG-71 forms related to ten of these cases. The DAG-71 forms indicate specifically which law enforcement agency originated the information leading to the seizure. In seven of the ten cases, the Missouri State Highway Patrol indicated that they originated the information leading to the seizure of property. However, in only one of these seven cases was a transfer order obtained before seized property was transferred to a federal agency.

Without obtaining prior approval before the transfer of a seizure, it is unclear whether or not it was necessary to transfer the property to a federal agency. Due to the fact that law enforcement agencies can benefit directly from any property they seize and transfer to a federal agency, there is an appearance of a conflict of interest. The conflict of interest, whether in appearance or in fact, among law enforcement agencies is greatly reduced when approval for a transfer of seized assets is obtained from the prosecuting attorney and the circuit judge of the county in which the property was seized.

State and local law enforcement agencies could reduce the appearance of a conflict of interest by obtaining approval for a transfer of seized assets from the prosecuting attorney and the circuit judge of the county in which the property was seized.

The Equitable Sharing Program appears to encourage state and local law enforcement agencies to use federal forfeiture laws rather than state laws in order to retain a share of the forfeiture proceeds.

The proceeds of property seized and forfeited under state laws are used for education. Section 7, Article IX of the Missouri Constitution states that "the clear proceeds of all penalties, forfeitures, and fines collected hereafter for any breach of the penal laws of the state shall be distributed annually to the schools of the several counties according to law". In contrast, the Equitable Sharing Program allows state and local law enforcement agencies to share in the proceeds of forfeitures under federal law. This appears to be a conflict of interest to all state and local law enforcement agencies, because law enforcement agencies can benefit directly from any property they seize under federal forfeiture laws, including property seized illegally.

Even if the "activity giving rise to an investigation or seizure involves more than one state or the nature of the investigation or seizure would be better pursued under federal forfeiture statutes", there remains the appearance that state and local law enforcement agencies can circumvent state law and retain a share of forfeiture proceeds if the property is forfeited federally. This appearance of impropriety is even greater when considering the numerous seizures where transfer orders approved independently by the prosecuting attorney and the circuit judge of the county are not obtained prior to the transfer of seized property to a federal agency.

Over the past three years, state and local law enforcement agencies have received millions of dollars through the Equitable Sharing Program. Because approval is generally not obtained prior to a transfer of seized property, as required by statute, it appears that a portion of these proceeds may have instead gone through state forfeiture procedures resulting ultimately in additional funding for education in state schools.

The legislature may wish to consider examining federal and state forfeiture procedures to determine whether statutory changes are needed to eliminate conflict of interest situations.

State laws do not specifically address situations where cash is seized, no person claims ownership, and it appears a felony was not committed.

During our program evaluation, Oversight selected fifteen cases to review. While reviewing those cases, Oversight noted two cases where a suspect was detained, and while searching their vehicles, money was found. The cash seized in these two cases totaled over \$550,000, and when asked about the money, the suspects claimed they had no knowledge of the cash. In both of these cases, a federal agency was called to assist in the case, and the cash that was seized was transferred to that federal agency for federal forfeiture.

Section 513.647, RSMo states that "no transfer shall be made to a federal agency unless the violation would be a felony under Missouri law or federal law". Despite the fact there was no evidence a felony had been committed, both of these cases were transferred to a federal agency. According to officials of the Missouri State Highway Patrol, the reason these cases were transferred is because there is no state law that authorizes the seizure and forfeiture of money when a crime has not been committed. Federal forfeiture laws, however, can be used to seize the cash.

The legislature may wish to consider statutory changes to state forfeiture or state unclaimed property laws to specifically address situations where cash is seized, no person claims ownership of it, and no felony was committed.

Chapter 3 - Expenditures

The Missouri State Highway Patrol (MHP) made expenditures from the Federal Drug Seizure Fund that were not permissible under guidelines established by the United States Departments of Justice and Treasury.

The United States' Department of Justice and Department of Treasury have established guidelines for the Equitable Sharing Program. These guidelines, A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies and a Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies, detail specific permissible and impermissible uses of forfeiture proceeds shared by federal, state, and local law enforcement agencies.

Permissible uses, under these guidelines, include activities calculated to enhance future investigations, law enforcement training, law enforcement equipment and operations, detention facilities, law enforcement facilities and equipment, and drug education and awareness programs. Impermissible uses include payment of salaries for existing positions, use of forfeited property by non-law enforcement personnel, payment of non-law enforcement expenses, and extravagant expenditures.

During our program evaluation, Oversight selected fifty-one expenditures of the Missouri State Highway Patrol and Missouri State Water Patrol to review to determine if they were for law enforcement purposes, used to supplement and not supplant the agency's budget, reasonable, and permissible. The Office of the Adjutant General has not made any expenditures from this fund as they are currently waiting for the Asset Forfeiture and Money Laundering section of the federal government to determine whether or not the agreement made between the Drug Enforcement Administration and the Office of the Adjutant General is equitable and allowable. While reviewing these expenditures, Oversight noted a salary expense. Salaries are generally impermissible unless for first year, new, temporary, or not-to-exceed one year positions. This particular payment was made to an individual who had been employed at the Patrol for several years and who was normally paid from a different fund. Upon further investigation, Oversight noted four payments totaling \$16,573 made during the month of June, 1998, for salaries that appeared impermissible by federal guidelines.

Department of Public Safety personnel indicated that these payments were made because the fund these employees were normally paid salaries from was not able to cover their normal monthly salaries. Therefore, for that month only, these salaries were paid from the Federal Drug Seizure fund. These salary payments appeared to be impermissible under federal guidelines. Oversight spoke with representatives of the United States Attorney's Office who confirmed these expenditures as being impermissible.

Oversight also noted expenditures for copier maintenance and kitchen laundry services. These expenditures do not appear to be necessary for law enforcement purposes.

Noncompliance with policies set forth in the Guide subject recipient agencies to one or more sanctions, including being barred from further participation in the sharing program and offsets from future sharing in an amount equal to the impermissible uses of proceeds.

The Missouri State Highway Patrol should ensure that all expenditures of funds from the Equitable Sharing Program are permissible under guidelines established by the United States' Departments of Justice and Treasury.

Chapter 4 - Reporting and Record Keeping

The Missouri State Highway Patrol and Missouri State Water Patrol submitted their Annual Certification Reports to the United States' Department of Justice and Department of Treasury after the due date.

According to the Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies, for each fiscal year, any state or local law enforcement agency that received federal property or cash as a result of a federal forfeiture is required to complete and submit an Annual Certification Report to the United States Department of Justice and Department of Treasury within sixty days after the close of the agency's fiscal year. Submission of the Annual Certification Report also applies to any agency that had any unspent, previously shared money in a holding account at any time during the fiscal year.

During our program evaluation, Oversight noted that the Missouri State Highway Patrol did not file their Annual Certification Report within 60 days of the end of the fiscal year, as required, in 1996 and 1998. In addition the Missouri State Water Patrol did not submit their Annual Certification Report in a timely manner in 1996 and 1997.

Noncompliance with policies set forth in the Guide subject recipient agencies to one or more sanctions, including being barred from further participation in the sharing program.

The Missouri State Highway Patrol and Missouri State Water Patrol should ensure the Annual Certification Reports are completed and submitted to the United States' Departments of Justice and Treasury in a timely manner.

The Missouri State Highway Patrol does not maintain documentation related to the number of hours expended on cases, as reported on the DAG-71 Forms, where property which was seized was transferred to a federal agency.

In order to request a share of forfeiture proceeds, a DAG-71 Form is completed. Included on the form is the number of hours expended on the case by the state or local law enforcement agency.

According to the Guide, sharing in joint cases reflects the "degree of direct participation of the state or local agency in the law enforcement effort resulting in the forfeiture. Normally this is determined by comparing the number of hours expended by the agents involved".

The Missouri State Highway Patrol does not maintain documentation of the number of hours expended on joint cases. When completing the DAG-71 Form, the Missouri State Highway Patrol estimates the number of hours expended on the case, instead of basing it on actual hours worked. Without documentation of the number of hours spent on a case, there is no way to be sure that the number of hours reported on the DAG-71 forms, and the related percentage share that the Missouri State Highway Patrol receives, is accurate.

State law enforcement agencies should document and maintain the number of hours worked on cases where property was seized and transferred to a federal agency in order to ensure the

The Missouri State Highway Patrol did not accurately report the revenue received during 1997 on the Annual Certification Report submitted to the United States Department of Justice and Department of Treasury.

state receives a correct and fair percentage share of the forfeiture proceeds.

The Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies also notes that the head of the law enforcement agency and a designated official of the governing body must sign the Annual Certification Report to certify that the accounting of funds received and spent by the law enforcement agency is accurate and in compliance with the guidelines and statutes that govern the equitable sharing program.

During our program evaluation, Oversight noted that the Missouri State Highway Patrol made an error in their Annual Certification Report by failing to report sharing proceeds of \$17,654 in 1997. Noncompliance with policies set forth in the Guide subject recipient agencies to one or more sanctions, including being barred from further participation in the sharing program.

State law enforcement agencies should ensure the Annual Certification Reports submitted to the United States' Departments of Justice and Treasury are accurate.

Chapter 5 - Executive Summary

Conclusions and Recommendations

The Federal Drug Seizure Fund, within the Department of Public Safety, represents the state's portion of seized and confiscated property proceeds resulting from joint state and federal drug investigations under the United States Departments of Justice and Treasury's Equitable Sharing Program. The Equitable Sharing Program purpose is to deprive criminals of property used in or acquired through illegal activities; encourage joint operations among federal, state, and local law enforcement agencies; protect the rights of the individual; and strengthen law enforcement.

Forfeited assets are shared with the state law enforcement agencies that helped make the case, based upon their participation with federal agencies in the investigation. Any state law enforcement agency that directly participates in an investigation or prosecution that results in a federal forfeiture may participate in the Equitable Sharing Program and request a share of the net proceeds of the forfeiture. Agencies generally participate in the program through joint investigations, where federal agencies work with state law enforcement agencies to enforce federal criminal laws, or adoption of a state seizure.

The Oversight Division's evaluation included interviewing Department of Public Safety personnel; interviewing United States Department of Justice and Department of Treasury personnel; reviewing statutes, guidelines, rules and regulations; reviewing policies and procedures; and examining financial and other records. Records of local law enforcement agencies were not within the scope of our evaluation.

Our scope was not limited to any specific fiscal years; however, most of the information examined was from fiscal years 1996 through 1998. During that period of time, the Federal Drug Seizure Fund, within the Department of Public Safety, received \$2,276,639.

Oversight concluded that all state law enforcement agencies, including the Missouri State Highway Patrol, could reduce the appearance of a conflict of interest by obtaining approval for a transfer of seized assets from the prosecuting attorney and the circuit judge of the county in which the property was seized, as is required by statute. Also the legislature may wish to consider statutory changes containing a penalty provision for state law enforcement agencies who do not obtain prior

approval of transfer of seized property to a federal agency.

In the majority of cases, the Highway Patrol originated the information leading to the seizure of assets. The use of federal forfeiture laws appeared questionable in some cases. The Equitable Sharing Program may encourage state law enforcement agencies to use federal forfeiture laws rather than state laws in order to retain a share of the forfeiture proceeds. The legislature may wish to consider examining federal and state forfeiture procedures to determine whether statutory changes are needed to eliminate this conflict of interest.

Oversight noted two cases where cash was seized totaling over \$550,000, no one claimed ownership of the cash and there was no evidence a felony violation had been committed. According to state statutes, a transfer of the cash to a federal agency is not allowed unless there is a felony violation under state or federal law. However, these cases were transferred to a federal agency because, according to the Highway Patrol, the cash could not be legally seized by any other means. The legislature may wish to consider statutory changes to state forfeiture or state unclaimed property laws to specifically address situations where cash is seized, no person claims ownership of it, and no felony was committed.

The Missouri State Highway Patrol should ensure that all expenditures of funds from the Equitable Sharing Program are permissible under guidelines established by the United States' Department of Justice and Department of Treasury. Because an expenditure was made that was specifically identified as being impermissible, the Missouri State Highway Patrol should offset future sharings in the amount of \$16,57

All state law enforcement agencies could more accurately complete the DAG-71 Form and request a correct percentage share of forfeiture proceeds if documentation was maintained regarding the number of hours expended on cases where property was seized and transferred to a federal agency. To ensure state law enforcement agencies receive a fair percentage of forfeiture proceeds, accurate documentation of the number of hours worked should be maintained.

In order to avoid possible sanctions from the United States Department of Justice and Department of Treasury, the Missouri State Highway Patrol and Missouri State Water Patrol should ensure the Annual Certification Reports are accurate, complete, and submitted to these federal agencies in a timely manner.

We acknowledge the cooperation and assistance of staff of the Department of Public Safety, especially the Missouri Highway Patrol, during the evaluation process.


Jeanne Jarrett, CRA
Director

APPENDIX 1



Department of Public Safety
MISSOURI STATE HIGHWAY PATROL
Colonel Weldon L. Wilhoit, Superintendent

1510 East Elm Street
Post Office Box 568
Jefferson City, MO 65102-0568
Phone: (573) 751-3313 (V/TDD) • FAX: (573) 751-9419



Mel Carnahan
Governor

Gary B. Kempker
Director

March 9, 1999

Ms. Jeanne Jarrett, Director
Oversight Division
Joint Committee on Legislative Research
State Capitol Building
Jefferson City, MO 65101

RE: MSHP response to draft audit report


Dear Ms. Jarrett:

In October 1998 you began an audit of the Federal Drug Seizure Fund. On February 18, 1999, you met with us and provided us with a copy of the draft of your audit report. On March 1, 1999, we received from you a revision to that report. Enclosed you will find our response to your draft report.

You informed us that you would include our response as part of an appendix to the final report. We appreciate the opportunity to respond, and we are glad that you will reproduce our response as part of your final report. We do believe, however, that it would be more useful to the committee and anyone else reviewing the report, to include our response as part of your final report, directly after each of your findings and recommendations, rather than requiring the reader to continually turn back and forth between the audit report and an appendix attached to the back of the report. We understand that in the past you have included the agency's response in the body of the audit report. We would ask for the same consideration in this case.

Please fax us a copy of the final report as soon as it is released to the committee or the public.

Sincerely,


WELDON L. WILHOIT
Superintendent

DEPARTMENT OF PUBLIC SAFETY'S RESPONSE
TO OVERSIGHT'S AUDIT OF THE DRUG FORFEITURE FUND

Finding #1: Transfer orders are not always obtained for the transfer of seized property from state and local law enforcement agencies.

Oversight recommendation to Finding #1

The Oversight Division recommends that the legislature may wish to consider statutory changes containing a penalty provision for state and local law enforcement agencies who do not obtain approval of transfer of seized property to a federal agency.

MSHP Response

The Oversight Division's finding states that "state and local law enforcement agencies do not always obtain transfer orders for seized property. The Patrol cannot speak for other law enforcement agencies. It is the Patrol's policy to obtain a transfer order whenever required by state law. The Patrol acknowledges that there have been cases in which seized property was transferred to a federal agency without a transfer order. The Patrol has sought to eliminate any such cases through training and supervision, and is currently revising its general orders to ensure compliance with the statutory requirements."

Finding #2: In the majority of cases, the Missouri Highway Patrol originated the information leading to the seizure of assets.

Oversight recommendation to Finding #2

The Oversight Division recommends that state and local law enforcement agencies could reduce the appearance of a conflict of interest by obtaining approval for a transfer of seized assets from the prosecuting attorney and circuit judge of the county in which the property was seized.

MSHP Response

Oversight's finding implies that state law requires that a transfer order be obtained in any case in which the Patrol originated the information leading to the seizure of assets. The issue of who originates the information leading to the seizure is unrelated to whether a transfer order under state law must be obtained.

Finding #3 The Equitable Sharing Program appears to encourage state and local law enforcement agencies to use federal forfeiture laws in order to retain a share of the forfeiture proceeds.

Oversight recommendation to Finding #3

The legislature may wish to consider examining federal and state forfeiture procedures to determine whether statutory changes are needed to eliminate conflict of interest situations.

Patrol Response

The federal forfeiture law, and specifically the Equitable Sharing Program, encourage state and local law enforcement agencies to cooperate with each other in deterring crime by depriving criminals of the fruits of illegal activities. The goals of the program as stated by the United States Department of Justice are to (1) punish and deter criminal activity, (2) enhance cooperation, and (3) to produce revenues to enhance forfeiture efforts and strengthen law enforcement. The Patrol will support and enforce any changes that the legislature feels are appropriate.

Finding #4: State laws do not specifically address situations where cash is seized, no person claims ownership, and it appears no felony has been committed.

Oversight recommendation to Finding #4

Oversight states that the legislature may wish to consider statutory changes to state forfeiture or state unclaimed property laws to specifically address situations where cash is seized, no person claims ownership of it, and no felony was committed.

Patrol response

The Patrol agrees with this finding and recommendation.

Finding #5: The Missouri State Highway Patrol (MSHP) made expenditures from the Federal Drug Seizure Fund that were not permissible under guidelines established by the United States Department of Justice and Treasury.

Oversight's recommendation to Finding #5

The Missouri State Highway Patrol should ensure that all expenditures of funds from the Equitable Sharing Program are permissible under the guidelines established by the United States' Departments of Justice and Treasury.

Patrol's Response

In the last payroll cycle of FY-98, the Patrol incorrectly paid the monthly salaries of four existing employees with Federal Drug Seizure funds. Once Oversight brought this to the attention of the Patrol, we immediately notified the United States Attorney's office in Kansas City and informed them of the mistake. The Patrol then remedied the error by reimbursing the Federal Drug Seizure Fund.

The Patrol disagrees with the conclusion that two other expenditures were not permissible under federal guidelines. The Patrol will contact the United States Department of Justice and ask them to clarify the proper use of Federal Drug Seizure funds in these two instances. If the Department of Justice does not approve the use of these funds for those purposes, the Patrol will discontinue that type of use of the funds.

Finding #6: The Missouri State Highway Patrol and Missouri State Water Patrol submitted their Annual Certification Reports to the United States' Department of Justice and Department of Treasury after the due date.

Oversight's Recommendation

The Missouri State Highway Patrol, Missouri State Water Patrol, and Office of Adjutant General should ensure the Annual Certification Reports are completed and submitted to the United States Departments of Justice and Treasury in a timely manner.

Patrol's response

Oversight has noted that the Patrol did not file the Annual Certification Report within 60 days of the end of the fiscal year in 1996 and 1998. The untimely filing was the result of an effort to ensure a full and accurate report. Reports relating to some expenditures are not received from the Office of Administration until September or October, which is more than sixty days from the end of the fiscal year on June 30. Filing the certification report within 60 days from when those final reports are received from the Office of Administration rather than 60 days from the end of the fiscal year leads to a delay in filing, but it ensures that all expenditures from that fiscal year are included and that the ending balance is accurate.

Prior to Oversight's audit, the Patrol asked the Department of Justice for clarification on this matter, and we are awaiting their response.

Water Patrol Response

Oversight has noted that the Annual Certification Reports for FY96 and FY97 were not submitted in a timely manner to the U.S. Department of Justice and/or the U.S. Department of Treasury. The Water Patrol's FY96 report was inadvertently filed late on January 16, 1997. The FY97 Annual Certification Report was not submitted in a timely manner because the individual responsible for the task retired. The report was promptly filed as soon as the new employee realized the report had not been filed. All future reports for the Water Patrol will be filed on a timely basis.

Finding #7: The Missouri State Highway Patrol does not maintain documentation related to the number of hours expended on cases, as reported on the DAG-71 Forms.

Oversight's recommendation to finding #7

State law enforcement agencies should document and maintain the number of hours worked on cases where property was seized and transferred to a federal

agency in order to ensure the state receives a correct and fair percentage share of the forfeiture proceeds.

Patrol response

Oversight contends that agencies should document and maintain the number of hours worked on cases where property was seized and transferred to a federal agency. There is no such requirement under federal law. The Department of Justice has never required a precise hourly account for documentation on DAG-71 forms. Instead they encourage agencies to make an estimate of the hours expended on each case. Furthermore, many other factors may affect the amount distributed.

Finding #8: The Missouri State Highway Patrol did not accurately report the revenue received during 1997 on the Annual Certification Report submitted to the United States Department of Justice and Department of Treasury.

Oversight's recommendation to Finding #7

State law enforcement agencies should ensure the Annual Certification Reports submitted to the United States' Departments of Justice and Treasury are accurate.

Patrol's response

Oversight has noted that the Patrol did not report \$17,654 in revenue on our Annual Certification Report for 1997. On one occasion a report did not accurately identify one particular receipt, in the amount of \$17,653.80, as originating from the Department of Justice when it was deposited in March 1997. As a result, this amount was inadvertently omitted from the Annual Certification Report for that year. A revised report for 1997 correcting this error will be filed with the Department of Justice.